

1
2
3
4
5
6 UNITED STATES DISTRICT COURT FOR THE
7 DISTRICT OF ALASKA

8 SPINELL HOMES, INC.,

9 Plaintiff,

10 vs.

11 UNITED SPECIALTY INSURANCE
12 COMPANY, BENCHMARK INSURANCE
13 COMPANY, and TOTEM AGENCIES, INC.
foreign insurance company,

14 Defendants.

No. 3:21-cv-00092-JWS

**DEFENDANT BENCHMARK
INSURANCE COMPANY'S NOTICE
OF REMOVAL PURSUANT TO 28
U.S.C. §1441(a)**

15 TO: The Clerk of the Court;

16 AND TO: Plaintiff, and their counsel of record, Laura Dulic.

17 Please take Notice that Defendant Benchmark Insurance Company (hereinafter,
18 "Benchmark") hereby removes to this Court the state court action described below.

19 **I. THE SUBJECT ACTION**

20 1. On March 18, 2021, Plaintiff filed its First Amended Complaint in the Superior
21 Court for the State of Alaska at Anchorage, under Case No. 3AN-21-04904CI (hereinafter, the
22 "Underlying Lawsuit"). Sometime thereafter, Plaintiff served Benchmark with a true and correct
23 copy of the Summons and First Amended Complaint. **Exhibit 1.**

1 Benchmark Policy provided \$1,000,000 in coverage per occurrence. **Exhibit 1.**

2 13. Allegedly a fire or multiple fires caused severe damage to the Robinson's home.
3 **Exhibit 1.** A subsequent investigation into the cause of the fire(s) ascribed blame to the negligent
4 fabrication and/or installation of the chimney, its components, and/or the wood framed metal
5 enclosure around the chimney. **Exhibit 1.**

6 14. The Robinsons allegedly submitted a claim to their homeowners' insurer and were
7 paid approximately \$529,516.30. **Exhibit 1.** The Robinsons also allegedly incurred damages not
8 covered by their insurance policy in the amount of \$35,000. **Exhibit 1.**

9 15. Plaintiff now seeks to recover alleged damages from the Defendant's related to
10 sums paid by Plaintiff to the Robinsons and the Robinson's homeowner's insurance carrier.
11 **Exhibit 1.**

12 16. Plaintiff alleges Totem owed them a duty to exercise reasonable care, skill, and
13 diligence in procuring insurance and/or in timely advising Plaintiff adequately of the existence,
14 risks, or costs of potential gaps in coverage. **Exhibit 1.**

15 17. Plaintiff also alleges damages as a result of breach of contract by USIC. **Exhibit 1.**

16 18. Plaintiff also alleges damages as a result of breach of contract by Benchmark.
17 **Exhibit 1.**

18 19. Plaintiff alleges damages in excess of \$100,000. **Exhibit 1.**

19 20. On March 18, 2021, Plaintiff filed the First Amended Complaint, alleging claims
20 for negligence, professional malpractice, and breach of contract. **Exhibit 1.**

21 21. Plaintiff claims they are entitled to compensatory, consequential, and incidental
22 damages from any and all breaches, and awarded the costs of this action, including reasonable
23 attorney fees and costs, pre-judgment interest, post-judgment interest and any other relief this
24

1 Court deems equitable. **Exhibit 1.**

2 22. The jurisdictional minimum may be satisfied by claims of general and specific
3 damages, by attorney's fees, and by punitive damages. *Kroske v. U.S. Bank Corp.*, 432 F.3d 976,
4 980 (9th Cir. 2005); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 946 (9th Cir. 2001); *Galt v.*
5 *Scandinavia*, 142 F.3d 1150, 1155 – 56 (9th Cir. 1998).

6 23. The amount in controversy requirement may be satisfied by the Plaintiff's claim for
7 more than \$100,000 in damages. **Exhibit 1.**

8 24. Based on the foregoing, the amount in controversy in this matter is in excess of the
9 \$75,000 jurisdictional limitation.

10 IV. JURISDICTION

11 25. For purposes of determining jurisdiction under 28 U.S.C. §1332, USIC, Defendant
12 Totem is organized under the laws of Washington, Defendant USIC is organized under the laws
13 of Texas, Defendant Benchmark is organized under the laws of Minnesota, and Plaintiff is
14 organized under the laws of Alaska. **Exhibit 1.** As a result, Plaintiff and Defendants are organized
15 under the laws of different states.

16 26. The amount in controversy exceeds \$75,000, excluding interest and costs.

17 27. This Court, therefore, has jurisdiction over this controversy under 28 U.S.C. §1332
18 and 28 U.S.C. §1441.

19 28. Counsel has appeared on behalf of Defendant Totem and has provided consent for
20 this Notice of Removal.

21 29. Counsel has appeared on behalf of Defendant USIC and has provided consent for
22 this Notice of Removal.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

V. TIMELINESS

30. Plaintiff filed the complaint on March 18, 2021. **Exhibit 1.** Benchmark was served a copy of the Summons and Complaint sometime thereafter. **Exhibit 1.** This Notice of Removal, filed on April 14, 2021, is timely under 28 U.S.C. §1446.

**VI. COPIES OF PROCESS, PLEADINGS, ORDERS, AND MOTIONS IN STATE
COURT PROCEEDINGS**

31. In accordance with 28 U.S.C. § 1446, attached to this Notice as Exhibit 1 are true and correct copies of all process, pleadings, and orders served on Benchmark in the action before the Superior Court in the State of Alaska. These documents are:

A. First Amended Complaint

B. Summons to Benchmark

32. Notice of this removal will be filed with the Clerk of the Alaska Superior Court and will be given to all other parties, in accordance with 28 U.S.C. § 1446.

DATED this 14th day of April, 2021

LEATHER LAW GROUP

/s/ Thomas Lether

Thomas Lether, WSBA No. 18089

Sam Colito, WSBA No. 42529

1848 Westlake Avenue N, Suite 100

Seattle, WA 98109

P: (206) 467-5444/F: (206) 467-5544

tlether@letherlaw.com

scolito@letherlaw.com

Counsel for Benchmark Insurance Company